

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ARRIAGA,)	
)	
Plaintiff,)	
)	No. 04 C 2904
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Preliminary Jury Instructions

Members of the Jury, before the opening statements of the lawyers, I want to read to you certain preliminary jury instructions on the law. Although I will read the final jury instructions at the proper time in the trial and give you each of copy of those final jury instructions for your use during your deliberations, I am going to read to you these preliminary jury instructions so you will have a better understanding of certain aspects of the law that apply in this case.

It is the duty of every operator of a motor vehicle using a public highway to exercise ordinary care at all times to avoid placing himself or herself or others in danger and to exercise ordinary care at all times to avoid a collision.

When I use the words "ordinary care," I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence in the case.

On October 10, 2001, it was the duty of the defendant the United States of America's employee, Ms. Aakosua B. Agyeiwaa, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff, Mr. Jose Arriaga. That means it was the duty of Ms. Agyeiwaa to be free from negligence.

On October 10, 2001, it was the duty of the plaintiff, before and at the time of the occurrence, to use ordinary care for his own safety. A plaintiff is contributorily negligent if (1) if he fails to use ordinary care for his own safety and (2) his failure to use such ordinary care is a proximate cause of the injury.

The plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury for which recovery is sought, does not bar his recovery. However, the total amount to which he would otherwise be entitled is reduced in proportion to the amount of plaintiff's negligence. This is known as comparative negligence.

If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury for which recovery is sought, the defendant shall be found not liable.

When I use the expression "proximate cause," I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

When I use the expression "contributory negligence," I mean negligence on the part of the plaintiff that proximately contributed to cause the alleged injury.

The plaintiff, Mr. Jose Arriaga, claims that on October 10, 2001 he was injured, and that the defendant United States of America, acting through its agent, Ms. Akosua Agyeiwaa, was negligent in one or more of the following respects:

- Failed to stop her motor vehicle when danger was imminent so as to avoid causing a collision.
- Failed to keep a proper lookout for other vehicles in and about the area.

- Failed to give proper and adequate warning of the approach of her motor vehicle although such warning was necessary to ensure the safe operation of her motor vehicle.
- Failed to change the course of said motor vehicle so as to avoid striking another vehicle when it was necessary to avoid causing injuries to the Plaintiff.
- Failed to maintain her vehicle wholly within her lane of traffic.

The plaintiff, Mr. Arriaga, further claims that one or more of the foregoing was a proximate cause of his injuries.

The defendant, United States of America, denies that its employee, Ms. Agyeiwaa, did any of the things claimed by the plaintiff, denies that Ms. Agyeiwaa was negligent in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the part of Ms. Agyeiwaa was a proximate cause of the plaintiff's claimed injuries.

The defendant, United States of America, claims that the plaintiff, Mr. Jose Arriaga, was contributorily negligent in one or more of the following respects:

- Failed to keep a proper lookout;
- Failed to reduce speed to avoid an accident;
- Failed to reduce speed approaching an intersection;
- Operated his motor vehicle too fast for conditions;
- Following too closely;
- Failed to exercise due care in passing another vehicle on the right;
- Failed to give audible warning with his horn to ensure safe operation of a motor vehicle; and
- Failed to exercise ordinary care at all times to avoid placing himself and others in danger and to exercise ordinary care at all times to avoid a collision.

The defendant, United States of America, further claims that one or more of the foregoing was the sole proximate cause of the plaintiff's injuries.

The plaintiff denies that he did any of the things claimed by defendant, denies that he was negligent and denies that any claimed act or omission on his part was a proximate cause of his claimed injuries.

When I say a particular party has the burden of proving something by "a preponderance of the evidence," or when I use the expression "if you find," I mean that when you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent.

Second, that the plaintiff was injured;

Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the defendant's claim that the plaintiff was contributorily negligent.

As to that claim, the defendant has the burden of proving both of the following propositions.

A. That the plaintiff acted or failed to act in one of the ways claimed by the defendant as stated to you in these instructions and that so acting, or failing to act, the plaintiff was negligent.

B. That the plaintiff's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has not proved both of the propositions

required of the defendant, when your verdict should be for the plaintiff and you will not reduce plaintiff's damages.

If you find from your consideration of all the evidence that the defendant has proved both of the propositions required of the defendant, and if you find that plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury for which recovery is sought, then your verdict should be for the defendant.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has proved both of the propositions required of the defendant, and if you find that the plaintiff's contributory negligence was 50% or less of the total proximate cause of the injury for which recovery is sought, then your verdict should be for the plaintiff and you will reduce the plaintiff's damages in the manner stated to you in the final jury instructions.

The parties to this trial and I do appreciate your diligence in listening to and reviewing the evidence and deciding the issues in this trial in accordance with the law and the evidence.

Thank you.